



# Merchant Shipping Act 1988

## 1988 CHAPTER 12

### PART III

#### MISCELLANEOUS PROVISIONS RELATING TO MERCHANT SHIPPING ETC.

##### *Protection of shipping interests*

#### **38 Amendments of Part III of Merchant Shipping Act 1974**

- (1) Part III of the Merchant Shipping Act 1974 (protection of shipping and trading interests) shall be amended as follows.
- (2) In section 14 (foreign action affecting shipping), the following subsection shall be substituted for subsection (1)—
  - “(1) The Secretary of State may exercise the powers conferred by this section if he is satisfied that—
    - (a) a foreign government, or
    - (b) persons purporting to exercise governing authority over any territory outside the United Kingdom, or
    - (c) any agency or authority of a foreign government or of such persons, have adopted, or propose to adopt, measures or practices concerning or affecting any shipping services which—
      - (i) are damaging or threaten to damage the shipping or trading interests of the United Kingdom, or
      - (ii) are damaging or threaten to damage the shipping or trading interests of another State,and, in the latter case, the Secretary of State is satisfied that action under this section would be in fulfilment of the obligations of the United Kingdom to that other State or would be appropriate in view of any arrangements made between Her Majesty’s Government and the government of that other State.”
- (3) The following subsection shall be substituted for section 14(3)—

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“(3) The Secretary of State may by order provide for—

- (a) regulating the provision of any shipping services and the rates, fares or other amounts which may or must be charged for providing those services;
- (b) regulating—
  - (i) the admission and departure of ships to and from United Kingdom ports,
  - (ii) the nature of the shipping services they may be used to provide (whether by reference to the cargoes or passengers they may carry or otherwise), and
  - (iii) the loading or unloading of cargoes, the embarkation or disembarkation of passengers, or the doing of other things in connection with the provision of any shipping services;
- (c) regulating the making and implementation of agreements (including charter-parties) whose subject matter relates directly or indirectly to the provision of any shipping services, and requiring such agreements to be subject to the Secretary of State’s approval in such cases as he may specify;
- (d) imposing charges in respect of ships which enter United Kingdom ports in connection with the provision of any shipping services;
- (e) imposing, in pursuance of any Community obligation, such tax or duty payable by such persons and in such circumstances as the Secretary of State may specify;

and in this subsection “regulating”, except in relation to the rates, fares or other amounts which may or must be charged as mentioned in paragraph (a) above, includes imposing a prohibition.”

(4) In section 14(4) (orders under subsection (3)), for “subsection (1)(a)” substitute “subsection (1)(i)”.

(5) In section 14(5) (directions by Secretary of State), for “charges imposed under subsection (3)(d) above” there shall be substituted “any charge, tax or duty imposed under subsection (3)(d) or (e) above”.

(6) The following subsections shall be substituted for section 14(11) and (11A)—

“(11) In this section—

- (a) “foreign government” means the government of any State other than the United Kingdom;
- (b) references to an agency or authority of a foreign government or of such persons as are mentioned in subsection (1)(b) above include references to any undertaking appearing to the Secretary of State to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a State other than, or by a territory outside, the United Kingdom;
- (c) “shipping services” means services provided by means of ships, and includes the carriage of goods or passengers by sea, cable laying, dredging, and services provided by offshore support vessels; and
- (d) references to ships are to ships of any registration.

(11A) A recital in an order under this section that the persons who have adopted, or propose to adopt, the measures or practices in question are—

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- (a) a foreign government, or
  - (b) such persons as are mentioned in subsection (1)(b) above, or
  - (c) an agency or authority of a foreign government or of such persons,
- shall be conclusive.”
- (7) In section 15 (parliamentary control of orders under section 14)—
- (a) at the beginning of each of subsections (1) and (2) there shall be inserted “Subject to subsection (2A) below,”;
  - (b) after subsection (2) there shall be inserted—
    - “(2A) Subsections (1) and (2) above do not apply to an order under the said subsection (3) which is made for the purpose only of implementing any Community obligation.”; and
  - (c) in subsection (4), after “recites” there shall be inserted “that it is made as mentioned in subsection (2A) above, or”.
- (8) In Schedule 4 (provisions supplementing section 14), for paragraph 2 there shall be substituted—

*“Orders imposing charges, taxes or duties*

- 2 (1) An order under subsection (3)(d) or (e) of the principal section —
- (a) may apply to ships of any description specified in the order, and may apply in particular to ships registered in a specified country, or to ships carrying goods or cargoes of a specified description, or providing any other specified shipping services (within the meaning of the principal section), and
  - (b) may contain such provisions as appear to the Secretary of State expedient to enable the Commissioners of Customs and Excise to collect any charge, tax or duty imposed by the order, and
  - (c) may apply, subject to any modifications or exceptions specified in the order, any of the enactments for the time being in force relating to duties (whether of customs or excise) chargeable on goods imported into the United Kingdom.
- (2) Any charge, tax or duty so imposed may be a fixed amount, or an amount depending on the tonnage of the ship.
- (3) Any such charge, tax or duty shall be payable to the Secretary of State.
- (4) An order shall not be made by the Secretary of State under subsection (3) (d) or (e) of the principal section except with the consent of the Treasury.
- (5) Nothing in this paragraph prejudices subsection (6) of that section.”

**39 Power to prohibit provision of coastal shipping services which are not British-based**

- (1) The Secretary of State may by order provide for the provision of shipping services to which this section applies to be prohibited except where such services are provided from one or more permanent places of business maintained in the British Islands.
- (2) This section applies to the following shipping services—

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- (a) the carriage of goods or passengers by sea—
    - (i) between ports in the United Kingdom, or
    - (ii) between a port in the United Kingdom and an offshore installation in United Kingdom waters, or
    - (iii) between offshore installations in United Kingdom waters;
  - (b) the carriage of passengers by sea on voyages or excursions beginning and ending at the same port in the United Kingdom, other than voyages or excursions which involve calling at any port or ports outside the British Islands (whether passengers disembark there or not); and
  - (c) shipping services (other than the carriage of goods or passengers by sea) which are—
    - (i) provided by means of ships operating out of ports in the United Kingdom (whether so provided within United Kingdom waters or not), or
    - (ii) provided within United Kingdom waters by means of ships operating out of ports outside the United Kingdom.
- (3) An order under this section may make provision—
- (a) with respect to the circumstances in which shipping services are to be regarded for the purposes of the order as being provided from one or more permanent places of business maintained in the British Islands;
  - (b) authorising the Secretary of State to issue licences sanctioning the provision of shipping services to which this section applies, notwithstanding that they are not provided as mentioned in paragraph (a) above, in cases where he is satisfied that there is no-one willing and able to provide the services in question as mentioned in that paragraph;
  - (c) requiring the payment, in connection with applications for such licences, of fees determined with the approval of the Treasury;
  - (d) exempting any prescribed class or description of shipping services from any prohibition imposed by virtue of subsection (1);
  - (e) authorising the Secretary of State, or a person appointed by him for the purpose, to serve notices requiring the production or furnishing of documents or information appearing to the Secretary of State or any such person to be necessary to enable him to determine such matters as may be prescribed;
  - (f) with respect to the manner of service of notices in pursuance of paragraph (e).
- (4) An order under this section may—
- (a) make different provision for different circumstances;
  - (b) make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient.
- (5) The provisions of an order under this section shall not discriminate between shipping services provided by different persons on the basis of the place of registration of the ships by means of which the services are provided.
- (6) Section 728 of the 1894 Act (appointment of inspectors) shall have effect in relation to—
- (a) any order under this section, or
  - (b) any licence issued by virtue of subsection (3)(b) above,
- as it has effect in relation to any such regulations or licence as is mentioned in paragraph (b) of that section; but section 27 of the Merchant Shipping Act 1979

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(powers of inspectors) shall have effect in relation to any inspector appointed by virtue of this subsection with the omission of paragraphs (f) to (h) of subsection (1) of that section.

(7) The power to make an order under this section shall be exercisable by statutory instrument, but no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(8) In this section—

“offshore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971;

“prescribed” means prescribed by an order under this section;

“shipping services” means—

(a) the carriage of goods or passengers by sea,

(b) services provided by offshore support vessels, and

(c) such other services provided by means of ships as the Secretary of State may specify in an order under this section;

“United Kingdom waters” means waters within the seaward limits of the territorial sea of the United Kingdom and waters in any area designated under section 1(7) of the Continental Shelf Act 1964.

#### **40 Enforcement of s. 39**

(1) Where—

(a) any ship is used in the course of the provision of any shipping services to which section 39 applies, or

(b) anything is done on board a ship with a view to its being used to provide any such services,

and the provision of those services is prohibited by virtue of subsection (1) of that section and is not sanctioned by any licence issued by virtue of subsection (3)(b) of that section, then (subject to subsections (6) and (7)), the master and the owner of the ship shall each be guilty of an offence.

(2) Where the ship—

(a) is chartered by demise, or

(b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement,

the reference in subsection (1) to the owner of the ship shall be construed as including a reference—

(i) to the charterer under the charter by demise, or

(ii) to any such manager as is referred to in paragraph (b) above, or

(iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager.

(3) Any person who—

(a) in connection with an application for such a licence as is mentioned in subsection (3)(b) of section 39, or

(b) in purported compliance with the requirements of any notice served on him by virtue of subsection (3)(e) of that section,

knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.

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- (4) Any person who—
- (a) without reasonable excuse (the proof of which lies on him) fails to comply with the requirements of any such notice, or
  - (b) intentionally alters, suppresses, conceals or destroys a document which he has been required to produce in pursuance of subsection (3)(e) of that section,
- shall be guilty of an offence.
- (5) Any person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) It shall be a defence in proceedings brought under subsection (1) against the master of a ship to prove—
- (a) that the master did not know and had no reason to suspect that, in the circumstances of the case, the provision of the shipping services referred to in paragraph (a) or (as the case may be) paragraph (b) of that subsection was prohibited by virtue of subsection (1) of section 39, or
  - (b) that the master had reasonable grounds for believing that the provision of those services was sanctioned by a licence issued by virtue of subsection (3)(b) of that section.
- (7) It shall be a defence in proceedings brought under subsection (1) against a person other than the master of a ship to prove that, under the terms of one or more charter-parties or management agreements entered into by the defendant, the right to determine the purpose for which the ship in question was being used at the time of the alleged offence was wholly vested in some other person or persons party thereto (whether or not any such other person or persons had entered into a further charter-party or management agreement providing for that right to be vested in some other person).
- (8) Subsections (1), (3) and (4) apply to offences falling within those subsections wherever committed.
- (9) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (10) Proceedings for an offence under this section shall not be instituted—
- (a) in England and Wales, except by or with the consent of the Attorney General or the Secretary of State; or
  - (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland or the Secretary of State.
- (11) Any document required or authorised, by virtue of any statutory provision, to be served for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under subsection (1) shall, where it is to be served on a person who was, at the time of the alleged offence—
- (a) the owner of the ship in question, or
  - (b) such a charterer by demise or manager of that ship as is mentioned in subsection (2),
- be treated as duly served on that person if—

(i) sent to him by post at his last-known address (whether of his residence or of a place where he carries on business), or

(ii) left for him at that address,

or if the document is served on the master of the ship in question.

(12) In this section “management agreement” has the same meaning as in section 30.